

SUZANNE BROWNLESS, P. A.  
ATTORNEY AT LAW  
1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301

ORIGINAL

ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200  
TELECOPIER (850) 878-0090

November 1, 2001

RECEIVED-FPSC  
01 NOV - 1 PM 3:14  
COMMISSION  
CLERK

BY HAND DELIVERY

Blanca Bayo  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Docket No. 991666-WU

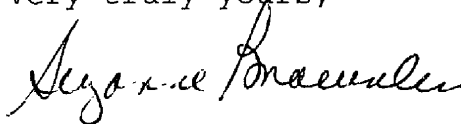
Re: Motion to Reopen Hearing and Request for Oral Argument

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of Motion to Reopen Hearing and Request for Oral Argument to be filed in this docket on behalf of the City of Groveland.

Please stamp a copy and return to us for our records.

Very truly yours,



Suzanne Brownless  
Attorney for City of Groveland

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC   I   \_\_\_\_\_  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED

*man*  
FPSC-BUREAU OF RECORDS *Motion* DOCUMENT NUMBER-DATE *Request* DOCUMENT NUMBER-DATE  
13840 NOV-15 13841 NOV-15  
FPSC-COMMISSION CLERK FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment )  
of Certificate No. 106-W to add ) Docket No. 991666-WU  
territory in Lake County by Florida)  
Water Services Corporation. )  
\_\_\_\_\_ )

MOTION TO REOPEN HEARING

The City of Groveland, (City), pursuant to Rule 28-106.204, Florida Administrative Code, files this Motion to Reopen Hearing and in support thereof states as follows:

1. Florida Water Services Corporation (FWSC) filed this application for amendment of its territory in Lake County, Florida on November 3, 1999. The Commission held a two-day hearing in Lake County on this application on July 11 and 12, 2001. At that hearing, Exhibit 5, FWSC's amendment application, was admitted into evidence. Exhibit 5 contains an Application For Service Extension executed by Robert A. Davis, as Trustee for the Summit requesting service by July 1, 2000. [Ex. 5; Water Service Agreement at 34]

2. One of the threshold issues in any certificate case is whether and when utility service is actually needed. The City's position at hearing was that if actually developed, The Summit would create a demand for service, but that the timing of that demand was so indefinite that the request for service was premature.

3. The City completed its water line extension to the western edge of The Summit property and notified the developer of that fact. In response to this information the developer's attorney, Steven J. Richey, sent the City a letter dated October

DOCUMENT NUMBER-DATE

13840 NOV-15

FPSC-COMMISSION CLERK.

CHC

31, 2001. [Attachment A] In this letter, Mr. Richey indicates that the developer "has requested that the City of Groveland provide water and wastewater services to The Summit" and that "the post September 11, 2001 economic climate has made it financially impossible" for his client "to proceed with the development of The Summit." The letter goes on to state that the developer has "stopped the development of this property and [sic] at this time and no date can be set when service will be needed." In short, there is no longer a need for service in the area requested by FWSC.

4. The legal standard applied to reopen a civil hearing when there are post hearing changed circumstances or newly discovered evidence is based upon Rules 1.530 and 1.540, Florida Rules of Civil Procedure: 1) the evidence is such that it will probably change the result if new trial is granted; 2) that it could not have been discovered before the trial by exercise of due diligence; 3) that it is material to the issue; and 4) that it is not merely cumulative or impeaching. City of Winter Haven, for Use and Benefit of Lastinger v. Tuttle/While Constructors, Inc., 370 So.2d 829, 831 (Fla. 2 DCA 1979). This standard has been applied both by the Division of Administrative Hearings and the Commission to motions to reopen hearings based upon newly discovered evidence/changed circumstances. City of Gainesville, Gainesville Regional Utilities v. University of Florida, DOAH Case No. 88-2034BID, issued on November 30, 1988 at 6 (citing Ragen v. Paramount Hudson, Inc., 434 So.2d 907 (Fla. 3d DCA 1983), rev.

den., 444 So.2d 417 (Fla. 1984)), 1988 Fla.Div.Adm.Hear. LEXIS 4454; James C. Lewis, Jr. v. Department of Banking and Finance, DOAH Case No. 86-1427, issued May 13, 1987 at 39-43, 1987 Fla.Div.Adm. Hear. LEXIS 3309; In re: Application of Air-Beep of Florida, Inc., FPSC Docket No. 74150-RCC, Order No. 6874, issued on August 28, 1975; In re: Investigation of forced shutdown of Crystal River No. 3, 81 F.P.S.C. 1:249, 252 (1981).

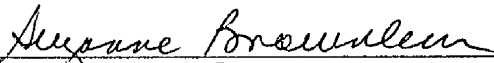
5. Need for service is the threshold question in any certificate case and the authority of the Commission to inquire into "the need or lack of need for service in an area that the applicant seeks to ... add" is expressly granted by §367.045(2)(b), F.S. The fact that the developer of The Summit has stopped development of this project indefinitely is a material change of circumstances which has the ability to change the outcome of this docket; it is not cumulative nor impeaching of previous testimony, nor was it capable of being discovered by the City prior to the hearing since it is based upon economic circumstances since September 11, 2001.

6. The criteria for reopening the hearing in this docket for the purpose of exploring the actual need for service in the area requested by FWSC in this docket have been met.

7. The undersigned counsel has contacted counsel for FWSC who is opposed to this motion.

WHEREFORE, the City of Groveland requests that the Commission reopen the hearing in this docket on the issue of actual need for service in the requested service area.

Respectfully submitted this 1st day of November, 2001 by:

  
Suzanne Brownless  
1311-B Paul Russell Road  
Suite 201  
Tallahassee, FL 32301  
(850) 877-5200  
FAX: (850) 878-0090

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the persons listed below by U.S. Mail and/or facsimile (\*) this 1st day of November, 2001:

J. L Yarborough, City Manager  
156 South Lake Avenue  
Groveland, FL 34736

(\*) Patricia Christensen, Esq.  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

(\*) J. Stephen Menton, Esq.  
Kenneth A. Hoffman, Esq.  
Rutledge Law Firm  
P.O. Box 551  
Tallahassee, Florida 32302

  
Suzanne Brownless, Esq.

c: 3461

# Steven J. Richey, P.A.

Steven J. Richey  
Attorney & Counselor at Law

October 31, 2001

**VIA FACSIMILE TRANSMISSION**  
**352-429-3852**

Mr. Jason Yarborough  
City Manager  
City of Groveland  
156 South Lake Avenue  
Groveland, FL 34736

Re: The Summit  
Bob Davis

Dear Mr. Yarborough:

The City of Groveland contacted my client, Bob Davis of Dueren and Davis, LLC, several months ago and advised him the City of Groveland was extending water to The Summit, a residential golf community in Lake County, Florida. In your October 10, 2001, letter you advised the City of Groveland completed its water line extension to the western border of The Summit Property. As we have discussed, Dueren and Davis, LLC, the record title holder to The Summit, has requested the City of Groveland provide water and wastewater services to The Summit. However, the post-September 11, 2001 economic climate has made it financially impossible for my client to proceed with the development of The Summit. That being the case, my client has stopped the development of this property and at this time and no date can be set when service will be needed.

Sincerely,

  
STEVEN J. RICHEY

SJR/dmh

C:\WPDOCS\RICHEY\MISC\yarboroughletter

Post-it® Fax Note	7671	Date	# of pages ▶ 5
To	SA Zahne	From	Jason
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	